

STATE OF MICHIGAN
COURT OF APPEALS

JAMES STEVEN PAPP, JR.,

Plaintiff-Appellant,

v

AMERITECH CORPORATION, INC., and
COMCAST CABLE VISION, INC.,

Defendants-Appellees.

UNPUBLISHED

April 6, 2006

No. 259115

Macomb Circuit Court
LC No. 04-000545-NI

Before: Smolenski, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging two circuit court orders that granted defendants' motions for summary disposition pursuant to MCR 2.116(C)(7). The court determined that plaintiff's action was barred by the statute of limitations. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Gladych v New Family Homes, Inc*, 468 Mich 594, 597; 664 NW2d 705 (2003).

According to the complaint, plaintiff was injured on February 9, 2001. He filed this negligence action on February 9, 2004. In *Gladych, supra* at 595, the Supreme Court held that "the mere filing of a complaint is insufficient to toll the statute of limitations. In order to toll the limitations period, one must also comply with the requirements of [MCL 600.5856]." Plaintiff does not claim that any of the circumstances for tolling occurred before the expiration of the three-year limitations period for his negligence action. Plaintiff's only argument to avoid the holding in *Gladych* is that its application would be unduly prejudicial and unfair under the circumstances.

Plaintiff argues that he diligently pursued his cause of action. Although his complaint against these defendants was filed three years after the incident, he had previously filed another action against a different defendant, but then dismissed it on November 4, 2002. In certain circumstances, a plaintiff's diligence may be relevant to whether the doctrine of equitable tolling should apply. See *Bryant v Oakpointe Villa Nursing Centre, Inc*, 471 Mich 411, 432; 684 NW2d 864 (2004). In *Bryant*, the Court applied the doctrine because the plaintiff's failure to comply with the applicable statute of limitations was "the product of an understandable confusion about

the legal nature of her claim, rather than a *negligent failure to preserve her rights*.” *Id.* (emphasis added). In the present case, *Gladych* was issued on July 1, 2003, well before the limitations period for plaintiff’s claim expired. The circumstances do not support equitable tolling, and plaintiff’s asserted diligence in pursuing the prior action is irrelevant to the outcome.

In further support of plaintiff’s unfairness argument, he notes that the Legislature amended MCL 600.5856 to effectively overrule *Gladych*.

MCL 600.5856 was amended, effective April 22, 2004. Under the amended statute, the limitations period is tolled at the time the complaint is filed so long as the defendant is served “within the time set forth in the supreme court rules.” 2004 PA 87. The amendment only applies to actions filed on or after its effective date. The act “does not apply to a cause of action if the statute of limitations or repose for that cause of action has expired before the effective date” of the act. 2004 PA 87, enacting § 1.

Plaintiff asserts that his complaint is essentially being deemed untimely because it was filed after the date for prospective application of *Gladych*, *supra* (September 1, 2003), and before the effective date of the amendment to MCL 600.5856, and that this “ridiculous application of *Gladych* . . . is unduly prejudicial and patently unfair” However, the purported unfairness of the Supreme Court’s determination of the scope of the prospective application of *Gladych* and the Legislature’s determination of the application of the amendment to MCL 600.5856 is not an appropriate basis for this Court to disregard *Gladych* and the version of the statute in effect at the time plaintiff’s complaint was filed.

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald S. Owens
/s/ Pat M. Donofrio